

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS**

LEXINGTON INSURANCE COMPANY,	)	
	)	Case No.: 17-cv-03513
Plaintiff,	)	Honorable Elaine E. Bucklo
	)	U.S. District Judge
v.	)	
	)	
CHICAGO FLAMEPROOF & WOOD	)	
SPECIALTIES CORP., JL SCHWIETERS	)	
CONSTRUCTION, INC., and JL SCHWIETERS	)	
BUILDING SUPPLY, INC.,	)	
	)	
Defendants.	)	

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**UNOPPOSED MOTION FOR ENTRY OF JUDGMENT**

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Plaintiff Lexington Insurance Company (“Lexington”), by and through its attorneys Matthew J. Fink, Amy Collins Cassidy, Rebecca E. Bennett, and Nicolaides Fink Thorpe Michaelides Sullivan LLP, respectfully moves this Court to enter judgment in its favor and against Defendants JL Schwieters Construction, Inc. and JL Schwieters Building Supply, Inc. (collectively “JL Schwieters”). In support of its motion, Lexington states as follows:

1. Lexington initiated this declaratory judgment action to determine whether a liability insurance policy issued by Lexington provided coverage to Defendant Chicago Flameproof & Wood Specialties Corp. (“Chicago Flameproof”) for an underlying lawsuit brought against Chicago Flameproof by JL Schwieters. (*E.g.*, ECF Doc. No. 1, ¶¶ 1-2, 6-7, 11-41).

2. Lexington named JL Schwieters as a defendant in this case because JL Schwieters is the plaintiff in the underlying lawsuit, and therefore potentially a necessary, but nominal, party to Lexington’s declaratory judgment action against Chicago Flameproof. (ECF Doc. No. 1, ¶¶ 6-

7); *see, e.g., Fathers of the Order of Mount Carmel, Inc. v. Nat'l Ben Franklin Ins. Co. of Ill.*, 697 F. Supp. 971, 973 (N.D. Ill. 1988). Lexington's complaint contained one count directed against Chicago Flameproof only. (ECF Doc. No. 1, ¶¶ 48- 62). Lexington's complaint did not contain any counts directed against JL Schwieters. (ECF Doc. No. 1).

3. On August 10, 2018, this Court granted summary judgment in favor of Lexington and against Chicago Flameproof, declaring Lexington owed no obligation to defend Chicago Flameproof in the underlying suit. (ECF Doc. No. 53).

4. This Court entered judgment on August 13, 2018. (ECF Doc. No. 54). The judgment states that "[j]udgment is hereby entered . . . in favor of plaintiff(s) Lexington Insurance Company and against defendant(s) Chicago Flameproof & Wood Specialties Corp." (ECF Doc. No. 54).

5. Chicago Flameproof timely moved the Court pursuant to Federal Rule of Civil Procedure 59(e) to reconsider the judgment. (ECF Doc. No. 55).

6. The Court denied Chicago Flameproof's motion for reconsideration on December 13, 2018. (ECF Doc. No. 64).

7. Chicago Flameproof filed a notice of appeal on January 9, 2019. (ECF Doc. No. 65).

8. Pursuant to 28 U.S.C. § 1291(a), federal appellate courts have jurisdiction "of appeals from all final decisions" of the district court. "A final, appealable decision is one that disposes of all claims against all parties." *Dale v. Lappin*, 376 F.3d 652, 654 (7th Cir. 2004).

9. Here, this Court's August 10, 2018 memorandum decision and the resultant August 13, 2018 judgment disposed of all claims and issues in the case in that it declared that the Lexington policy at issue does not provide coverage for Chicago Flameproof for the underlying

lawsuit brought by JL Schwieters. (ECF Doc. Nos. 54, 55). However, insofar as the August 13, 2018 judgment does not specifically state it is applicable against JL Schwieters, Chicago Flameproof has raised a possibility that the judgment could be deemed non-final and non-appealable because it does not dispose of all parties.


11. Accordingly, out of an abundance of caution, Lexington respectfully requests that this Court enter a separate judgment against JL Schwieters to remove any possible jurisdictional issue on appeal.

12. Counsel for Lexington has communicated with counsel for both Chicago Flameproof and counsel for JL Schwieters, and neither Chicago Flameproof nor JL Schwieters objects to this motion or the relief Lexington seeks.

WHEREFORE, Plaintiff Lexington Insurance Company respectfully requests that this Court enter a judgment pursuant to Federal Rule of Civil Procedure 58(a) in its favor and against Defendants JL Schwieters Construction, Inc. and JL Schwieters Building Supply, Inc., declaring that Lexington is not obligated to defend or indemnify defendant Chicago Flameproof & Wood Specialties Corp. with respect to the underlying lawsuit, and accordingly judgment is entered in favor of Plaintiff Lexington Insurance Company and against Defendants JL Schwieters Construction, Inc. and JL Schwieters Building Supply, Inc..

Dated: January 25, 2019

Respectfully submitted,

/s/   
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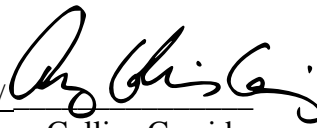
### **CERTIFICATE OF SERVICE**

I certify that on January 25, 2019, I caused a true and correct copy of the foregoing to be served upon the following counsel of record by operation of the Court's ECF System:

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